

Limited Liability Companies (LLCs)

Table of Contents

	Page		Page
I. INTRODUCTION	1		
II. DEFINITIONS APPLICABLE TO LLCS	1		
III. FORMATION OF AN LLC.....	2		
A. Who may organize an LLC?.....	2	4. What are the Wisconsin franchise or income tax consequences of converting to or merging into an LLC?.....	7
B. For what purposes may an LLC be organized?	2	B. Recycling Surcharge.....	7
C. Who may become an LLC member?	2	C. Withholding Tax.....	7
D. How is a member's interest in an LLC determined?	2	D. Sales and Use Tax	8
E. What is the nature of an LLC interest?.....	2	E. Excise Taxes (Beverage, Fuel, Cigarette, and Tobacco).....	8
F. What are the requirements in naming an LLC?	2	F. Withholding Requirement for LLCs Having Nonresident Members	9
G. How is a foreign LLC treated in Wisconsin?	3		
IV. MANAGEMENT OF AN LLC.....	3	VIII. TAX TREATMENT OF MEMBERS OF LLCS CLASSIFIED AS PARTNERSHIPS.....	9
A. Who is responsible for the management of an LLC?	3	A. LLC Members Who Are Full-Year Wisconsin Resident Individuals, Estates, and Trusts	9
B. How is the business operation of an LLC managed?.....	3	B. LLC Members Who Are Nonresident Individuals, Estates, and Trusts	9
C. Who makes the decisions for an LLC?.....	3	C. LLC Members Who Are Part-Year Wisconsin Resident Individuals	10
D. Are managers required to be members of an LLC?	3	D. LLC Members That Are Corporations	10
E. What are the responsibilities of a member for the liabilities of the LLC?.....	3	1. Corporate Member Engaged in Business Wholly Within Wisconsin	11
F. Who has ownership of LLC property?	3	2. Corporate Member Engaged in Business in and Outside Wisconsin	11
G. How are profits and losses of the LLC allocated and distributed?	3	3. Corporate Member Not Engaged in Business in Wisconsin	11
H. May a member make an assignment of an LLC interest?	4	E. LLC Members That Are Partnerships (Including LLCs Classified as Partnerships).....	12
V. DISSOLUTION OF AN LLC	4	IX. TAX TREATMENT OF MEMBERS OF LLCS CLASSIFIED AS CORPORATIONS.....	12
A. How may a member withdraw from an LLC?.....	4	A. LLC Members Who Are Full-Year Wisconsin Resident Individuals, Estates, and Trusts	12
B. How is an LLC dissolved?.....	4	B. LLC Members Who Are Nonresident Individuals, Estates, and Trusts	12
C. What events may result in the dissociation of a member?.....	4	C. LLC Members Who Are Part-Year Wisconsin Resident Individuals	13
D. Under what circumstances may a court order the dissolution of an LLC?	4	D. LLC Members That Are Corporations	13
E. Are mergers or conversions of LLCs allowed?	5	E. LLC Members That Are Partnerships (Including LLCs Classified as Partnerships).....	13
VI. CLASSIFICATION OF AN LLC FOR WISCONSIN FRANCHISE AND INCOME TAX PURPOSES	5	X. TAX TREATMENT OF MEMBERS OF LLCS DISREGARDED AS SEPARATE ENTITIES	13
A. How is an LLC operating in Wisconsin treated for Wisconsin franchise and income tax purposes?.....	5	A. LLC Members Who Are Full-Year Wisconsin Resident Individuals, Estates, and Trusts	13
B. How is an LLC classified under the Internal Revenue Code?.....	5	B. LLC Members Who Are Nonresident Individuals, Estates, and Trusts	13
VII. WISCONSIN TAX TREATMENT OF LLCS	5	C. LLC Members Who Are Part-Year Wisconsin Resident Individuals	13
A. Franchise and Income Tax.....	5	D. LLC Members That Are Corporations	13
1. What tax form does an LLC use to file a franchise or income tax return?.....	5	E. LLC Members That Are Partnerships (Including LLCs Classified as Partnerships).....	14
2. What is the treatment of Wisconsin tax credits for an LLC?	6	XI. ADDITIONAL INFORMATION OR FORMS.....	14
3. What are the Wisconsin franchise or income tax consequences of forming an LLC?	7		

IMPORTANT CHANGES

Angel Investment Credit. Members of a limited liability company (LLC) that meets certain Department of Commerce requirements and invests in a qualified new business venture may be eligible for a tax credit.

Early Stage Seed Investment Credit. Members of an LLC that makes payments to a Department of Commerce qualified fund manager for investment in a qualified new business venture may be eligible for a tax credit.

Employer for Withholding Tax Purposes. If a single-owner entity that is treated as a disregarded entity elects to be the employer for federal tax purposes, that same treatment applies for Wisconsin.

Sales and Use Tax Registration. A business must notify the Department of Revenue of any change in the legal form of the entity. As a new legal entity, the business generally will be assigned a new tax account number.

Wisconsin Net Income. Compute Wisconsin net income for taxable years beginning in 2005 using the federal Internal Revenue Code as amended to December 31, 2004, with certain exceptions.

Withholding Required for Nonresident Members. An LLC that has nonresident members is subject to a withholding tax, unless certain exceptions are met.

An LLC is a business entity that possesses both corporate characteristics and characteristics associated with a partnership. LLCs possess the corporate attribute of limited liability for LLC owners or members and the potential for treatment as a pass-through entity for federal and state income tax purposes. Federal law is controlling in the determination of whether an LLC is treated as a corporation or a partnership for Wisconsin franchise and income tax purposes. For taxable years beginning on or after January 1, 1997, an LLC that is disregarded as a separate entity for federal income tax purposes is disregarded as a separate entity for Wisconsin franchise or income tax purposes. For additional information about the tax treatment of LLCs, see Parts VI through X.

CAUTION

The information in this publication reflects the interpretations by the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of December 1, 2005. Laws enacted after that date, administrative rules, and court decisions may change the interpretations in this publication.

I. INTRODUCTION

This publication provides information about the Wisconsin tax treatment of limited liability companies (LLCs).

Effective January 1, 1994, Wisconsin law authorizes the organization and operation of limited liability companies in Wisconsin. Prior to 1994, Wisconsin law did not specifically address the treatment of LLCs. However, LLCs doing business in Wisconsin before 1994 would be treated in the same manner as for federal income tax purposes.

II. DEFINITIONS APPLICABLE TO LLCs

Articles of Organization - Articles of organization are articles filed under Chapter 183, Wis. Stats., and those articles as amended or restated. [§183.0102(1), Wis. Stats.]

Distribution - A distribution is a direct or indirect transfer by an LLC of money or other property, other than an interest in the LLC, to or for the benefit of its members in respect of their interests. [§183.0102(4), Wis. Stats.]

Domestic Limited Liability Company - A domestic LLC is an organization formed under Chapter 183, Wis. Stats., except as provided for mergers in sec. 183.1201(1), Wis. Stats. [§183.0102(10), Wis. Stats.]

Event of Dissociation - This is an event that causes a person to cease to be a member of an LLC. [§183.0102(6), Wis. Stats.]

Foreign Limited Liability Company - A foreign LLC is an organization that is all of the following:

- An unincorporated association.
- Organized under a law other than the laws of Wisconsin.
- Organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity.
- Not required to be registered or organized under any statute of Wisconsin other than Chapter 183.

[§183.0102(8), Wis. Stats.]

Limited Liability Company Interest - An LLC interest is a member's rights in the LLC, including the member's share of the profits and losses of the LLC, the member's right to receive distributions of LLC assets, and the member's right to vote or participate in management of the LLC. [§183.0102(11), Wis. Stats.]

Manager - A manager, with respect to an LLC that has set forth in its articles of organization that it is to be managed by one or more managers, is the person or persons designated to manage the LLC. [§183.0102(13), Wis. Stats.]

Member - A member is a person who has been admitted to membership in an LLC and who has not dissociated from the LLC. [§183.0102(15), Wis. Stats.]

Operating Agreement - This is an agreement or agreements in writing among all of the members as to the conduct of the business of an LLC and its relationships with its members. [§183.0102(16), Wis. Stats.]

Organizer - An organizer is the person who signs and delivers the articles of organization for filing to the Department of Financial Institutions. [§183.0102(17), Wis. Stats.]

Person - The term "person" includes an individual, a general partnership, a limited partnership, a domestic or foreign LLC, a trust, an estate, an association, a corporation, or any other legal or commercial entity. [§183.0102(18), Wis. Stats.]

State - The term "state" includes a state, territory, or possession of the United States, the District of Colum-

bia, or the Commonwealth of Puerto Rico. [§183.0102(19), Wis. Stats.]

III. FORMATION OF AN LLC

A. Who may organize an LLC?

One or more persons may organize an LLC by filing articles of organization with the Department of Financial Institutions. The organizer or organizers do not have to be members of the LLC. Articles of organization are similar to a corporation's articles of incorporation. [§183.0201, Wis. Stats.]

B. For what purposes may an LLC be organized?

An LLC may be organized for any lawful purpose. However, a business subject to other provisions of the Wisconsin Statutes may organize as an LLC only if not prohibited by, and subject to the limitations of, the other statutes. [§183.0106, Wis. Stats.]

C. Who may become an LLC member?

Any person, including individuals, corporations, and other legal entities, may be a member of an LLC. A person may become a member of an LLC at its organization or at any time after its organization. Prior to July 1, 1996, an LLC was required to have two or more members. [§§183.0201 and 183.0801, Wis. Stats.]

D. How is a member's interest in an LLC determined?

A member's interest in an LLC is based on the value of the member's contribution to the LLC. A person may contribute cash, property, services, or written obligations to provide cash or property or to perform services in order to become a member. [§183.0501, Wis. Stats.]

E. What is the nature of an LLC interest?

An LLC interest is personal property. [§183.0703, Wis. Stats.]

F. What are the requirements in naming an LLC?

The name of an LLC must include the words "Limited Liability Company" or an abbreviation of those

words. The name of the LLC must be distinguishable from other corporate, LLC, limited partnership, limited liability partnership, or association names registered with the Department of Financial Institutions. [§183.0103, Wis. Stats.]

G. How is a foreign LLC treated in Wisconsin?

An LLC organized under the laws of another state or country is required to obtain a certificate of registration from the Department of Financial Institutions in order to transact business in Wisconsin. A foreign LLC has no greater rights or privileges to operate in Wisconsin than an LLC that is organized in Wisconsin. A foreign LLC authorized to transact business in Wisconsin must maintain in Wisconsin a registered office and registered agent. [§§183.1001 through 183.1011, Wis. Stats.]

IV. MANAGEMENT OF AN LLC

A. Who is responsible for the management of an LLC?

Management of an LLC is the responsibility of its members, unless its articles of organization vest management authority in one or more managers. Managers or members exercising management responsibilities have the authority to act on behalf of the LLC, and to contractually bind the LLC. [§183.0401, Wis. Stats.]

B. How is the business operation of an LLC managed?

Members of an LLC may enter into an operating agreement that describes the responsibilities, rights, and duties of members and managers and the procedures that govern actions of members or managers. An operating agreement is similar to corporate by-laws or a partnership agreement. If the LLC does not have an operating agreement, or if an issue is not covered by or permitted in the operating agreement, then the terms in Chapter 183, Wis. Stats., apply. [§183.0401, Wis. Stats.]

C. Who makes the decisions for an LLC?

Unless an operating agreement provides differently, a majority vote of the members or managers is gen-

erally required to decide any issue. If management of an LLC is reserved to members, a member's vote is weighted according to the value of the member's contribution to the LLC. If management is vested in one or more managers, each manager has one vote on an issue. [§183.0404, Wis. Stats.]

D. Are managers required to be members of an LLC?

Managers need not be members of the LLC. In addition, managers are not required to be individuals. A manager may be appointed, removed, or replaced by a vote of the LLC members, unless otherwise provided for in an operating agreement. [§183.0401, Wis. Stats.]

E. What are the responsibilities of a member for the liabilities of the LLC?

The debts, obligations, and liabilities of an LLC are solely the responsibility of the LLC. Generally, an LLC member is not responsible for the debts or obligations incurred by the LLC beyond the value of the member's contribution. [§183.0304, Wis. Stats.]

Caution: Members or other individuals may be held personally liable for withholding, sales and use, or excise taxes based on their responsibilities or actions. See Parts VII.C, D, and E.

F. Who has ownership of LLC property?

All property transferred to or acquired by an LLC is property of the LLC and not of the members individually. [§183.0701, Wis. Stats.]

G. How are profits and losses of the LLC allocated and distributed?

Profits and losses of an LLC are allocated among members on the basis of their contributions, unless otherwise provided for in an operating agreement. Distributions of cash or the assets of an LLC are made to members in the same manner that profits are allocated, unless the distribution is varied by an operating agreement. [§§183.0503 and 183.0602, Wis. Stats.]

H. May a member make an assignment of an LLC interest?

A member may assign an interest in an LLC, in whole or in part, to another person. The assignment transfers the assignor's rights to profits, losses, and distributions. An assignee does not automatically become a member of the LLC; admission to the LLC requires the unanimous consent of the members, unless otherwise provided for in an operating agreement. [§183.0704, Wis. Stats.]

V. DISSOLUTION OF AN LLC

A. How may a member withdraw from an LLC?

Generally, a member may withdraw or dissociate from an LLC by filing a notice of withdrawal with the LLC, except as otherwise provided in an operating agreement [§183.0802(3), Wis. Stats.]

B. How is an LLC dissolved?

An LLC is dissolved if any of the following occurs:

- The occurrence of events specified in an operating agreement.
- The written consent of all members.
- Prior to July 1, 1996, if the LLC had only one member.
- For an LLC organized before October 1, 2002, an event of dissociation of a member, unless the remaining members unanimously agree to continue the LLC or unless otherwise provided for in the operating agreement.
- The entry of a decree of judicial dissolution.

[§183.0901, Wis. Stats.]

C. What events may result in the dissociation of a member?

A person ceases to be a member of an LLC if the member:

- Withdraws voluntarily from the LLC.
- Assigns all of the member's interest in the LLC and the assignee is admitted as a member.

- Is removed as a member in accordance with an operating agreement.
- Takes certain actions specified in Chapter 183, Wis. Stats., unless otherwise provided for in an operating agreement or by the written consent of all members. Events that may result in the dissociation of a member include the following:
 1. If the member is an individual, the member's death or the entry of a court order determining the member incompetent.
 2. If the member is a trust, the termination of the trust.
 3. If the member is a separate LLC, the dissolution of the separate LLC.
 4. If the member is a corporation, the filing of articles of dissolution or the revocation of its charter.
 5. If the member is an estate, the distribution by the fiduciary of the estate's entire interest in the LLC.
 6. If the member is a partnership or other entity, the dissolution of the partnership or entity.

[§183.0802, Wis. Stats.]

D. Under what circumstances may a court order the dissolution of an LLC?

An LLC may be subject to judicial dissolution if any of the following is established by a court:

- That it is not reasonably practicable to carry on the business of the LLC.
- That the LLC is not acting in conformity with an operating agreement.
- That one of the members or managers is acting or will act in an illegal or fraudulent manner.
- That LLC assets are being misapplied or wasted.

[§183.0902, Wis. Stats.]

E. Are mergers or conversions of LLCs allowed?

Simplified procedures for the merger or conversion of business entities became effective October 1, 2002.

Unless otherwise provided in an operating agreement, one or more LLCs may merge with or into one or more other business entities. An LLC may convert to another form of business entity if it satisfies the requirements of Chapter 183, Wis. Stats., and if the conversion is permitted under the laws of the jurisdiction that governs the organization of the business entity into which the LLC is converting. A business entity other than an LLC may convert to an LLC if it satisfies the requirements of Chapter 183 and if the conversion is permitted under the laws of the jurisdiction that governs the business entity.

For purposes of mergers and conversions, a “business entity” is a corporation, a nonstock corporation, an LLC, or a limited partnership, which is organized under the laws of Wisconsin or another jurisdiction. [§§183.1200 through 183.1207, Wis. Stats.]

VI. CLASSIFICATION OF AN LLC FOR WISCONSIN FRANCHISE AND INCOME TAX PURPOSES

A. How is an LLC operating in Wisconsin treated for Wisconsin franchise and income tax purposes?

An LLC that is treated as a partnership under the Internal Revenue Code (IRC) is treated as a partnership for Wisconsin purposes. [§71.195, Wis. Stats.] An LLC that is treated as a corporation under the Internal Revenue Code is treated as a corporation for Wisconsin purposes. [§71.22(1), Wis. Stats.] For taxable years beginning on or after January 1, 1997, an LLC that is disregarded as a separate entity under IRC section 7701 is disregarded as a separate entity for Wisconsin franchise and income tax purposes, and its owner is subject to the tax on or measured by its net income. [§§71.02(1), 71.20(1), and 71.22(1), Wis. Stats.]

For taxable years beginning on or after January 1, 2005, “Internal Revenue Code” means the federal Internal Revenue Code as amended to December 31, 2004, with numerous exceptions.

B. How is an LLC classified under the Internal Revenue Code?

The Internal Revenue Service issued “check-the-box” entity classification regulations under IRC section 7701 that are effective for federal purposes on January 1, 1997. These regulations generally allow LLCs with two or more members to choose to be taxed as partnerships or as corporations. LLCs that have a single owner may choose to be recognized or disregarded as entities separate from their owners. [Treas. Reg. §§301.7701-1, 301.7701-2, and 301.7701-3.]

VII. WISCONSIN TAX TREATMENT OF LLCs

A. Franchise and Income Tax

1. What tax form does an LLC use to file a franchise or income tax return?

If a partnership: An LLC classified as a partnership reports its income on federal Form 1065, U.S. Return of Partnership Income, and Wisconsin Form 3, Partnership Return. [§71.20(1), Wis. Stats.]

If a corporation: An LLC classified as a corporation files federal Form 1120 or 1120A, U.S. Corporation Income Tax Return, and Wisconsin Form 4 or 5, Corporation Franchise or Income Tax Return. If the LLC has elected to be a tax-option (S) corporation, it files federal Form 1120S, U.S. Income Tax Return for an S Corporation, and Wisconsin Form 5S, Tax-Option (S) Corporation Franchise or Income Tax Return. [§§71.22(1) and 71.24(1), Wis. Stats.]

If disregarded as a separate entity: An LLC disregarded as a separate entity includes its income, losses, and deductions on its owner’s return.

2. What is the treatment of Wisconsin tax credits for an LLC?

If a partnership: Members of an LLC classified as a partnership may claim the same credits that are available to partners of partnerships.

If a corporation: An LLC treated as a corporation may claim the same tax credits as a regular

(C) corporation, unless the LLC has elected to be treated as a tax-option (S) corporation.

If disregarded as a separate entity: The LLC's owner may claim any tax credits based on the LLC's activities for which the owner would otherwise be eligible.

See the chart that follows.

AVAILABILITY OF TAX CREDITS

Tax Credit	If a Partnership or a Disregarded LLC Owned by a Partnership	If a C Corporation or a Disregarded LLC Owned by a C Corporation	If a Disregarded LLC Owned by an Individual (Treated as Sole Proprietorship)
Dairy investment credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by owner.
Development zones credits	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by owner.
Farmland preservation credit	Yes. Members may claim credit based on share of LLC's taxes.	Yes. Claimed by LLC.	Yes. Claimed by owner.
Farmland tax relief credit	Yes. Members may claim credit based on share of LLC's taxes.	Yes. Claimed by LLC.	Yes. Claimed by owner.
Manufacturer's sales tax credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by owner.
Research			
Expense credit	No. Not available to LLC or members.	Yes. Claimed by LLC.	No. Not available to LLC or owner.
Facilities credit	No. Not available to LLC or members.	Yes. Claimed by LLC.	No. Not available to LLC or owner.
Supplement to federal historic rehabilitation tax credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by owner.
Technology zone credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by owner.
Venture capital			
Angel investment credit	Yes. Calculated by LLC and passed through to members who are individuals.	No. Not available to LLC.	Yes. Claimed by owner.
Early stage seed investment credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by owner.

3. What are the Wisconsin franchise or income tax consequences of forming an LLC?

Wisconsin follows the Internal Revenue Code with respect to the tax consequences of forming an LLC. To the extent allowable under the Internal Revenue Code, contributions to an LLC are tax free to both the LLC and the member. The member's basis in the LLC will equal the basis in the property contributed.

4. What are the Wisconsin franchise or income tax consequences of converting to or merging into an LLC?

Wisconsin follows the Internal Revenue Code with respect to the tax consequences of a partnership or corporation that converts to an LLC. If a business entity that converts to an LLC is required to notify the Internal Revenue Service of the conversion, a copy of the notification must be provided to the Wisconsin Department of Revenue.

For Wisconsin income tax purposes, the merger of a partnership, corporation, or LLC into another form of business entity is treated in the same manner as for federal income tax purposes. If the IRS must be notified of the transaction, a copy of the statement furnished to the IRS must be provided to the Wisconsin Department of Revenue.

B. Recycling Surcharge

If a partnership: An LLC classified as a partnership reports the recycling surcharge on Wisconsin Form 3S, Partnership Recycling Surcharge. [§§77.92(4) and (4m) and 77.93(3) and (5), Wis. Stats.]

If the recycling surcharge of an LLC classified as a partnership is delinquent, its members are jointly and severally liable for it. [§77.93(3) and (5), Wis. Stats.]

If a corporation: An LLC classified as a corporation calculates the recycling surcharge on Wisconsin Form 4, 5, or 5S, as appropriate. [§§71.22(1) and 77.93(1), Wis. Stats.]

An LLC that elects to be treated as a tax-option (S) corporation calculates the recycling surcharge on Wisconsin Form 5S. If the recycling surcharge is delinquent, its members are jointly and severally liable for it. [§77.93(1), Wis. Stats.]

If disregarded as a separate entity: The LLC does not compute its own recycling surcharge. Instead, its owner includes the LLC's information in the owner's computation of the surcharge. [§77.935, Wis. Stats.]

Note: The recycling surcharge applies to LLCs that have at least \$4 million of gross receipts for the taxable year.

C. Withholding Tax

For withholding tax purposes, LLCs with two or more members are treated in the same manner as other business entities. The LLC, if an employer, is required to withhold, deposit, and furnish reports of Wisconsin income taxes withheld as are other employers. [§§71.63(3), 71.65(1)(a), and 71.71, Wis. Stats.]

If an existing entity becomes an LLC and the Internal Revenue Service does not require the LLC to obtain a new federal employer identification number, the LLC may not be required to obtain a new Wisconsin employer identification number. If the IRS requires the LLC to obtain a new federal employer identification number, the LLC must obtain a new Wisconsin employer identification number.

If a member of an LLC performs services for the LLC and the Internal Revenue Service does not treat the member as an employee, the LLC is not required to withhold Wisconsin income taxes from payments made to the member for services performed.

A member, employee, or other "responsible person" who is under a duty to withhold and deposit taxes for an LLC may be held personally liable for the LLC's Wisconsin income taxes withheld or required to be withheld. [§71.83(1)(b)2, Wis. Stats.]

Except as explained in the following paragraph, if an LLC is disregarded as a separate entity under IRC section 7701, its owner, not the LLC, is con-

sidered to be the employer. If the Internal Revenue Service does not require the LLC to obtain a separate federal employer identification number, the LLC is not required to obtain a separate Wisconsin employer identification number. The owner must withhold, deposit, and furnish reports of Wisconsin income taxes withheld for services performed by employees of the LLC or the owner.

A disregarded entity that elects to be the employer for federal withholding tax purposes is the employer for Wisconsin purposes. If the entity does not deduct, withhold, report, and deposit the tax as required, the owner of the disregarded entity is liable for any tax, interest, and penalties. [§71.63(3)(c) and (h), Wis. Stats.]

D. Sales and Use Tax

For sales and use tax purposes, LLCs with two or more members are treated in the same manner as other business entities. The LLC, as a retailer or consumer, is required to register, report, and pay Wisconsin sales and use taxes as are other retailers or consumers. [§§77.52(7) and 77.53(9) and (9m), Wis. Stats.]

If an existing entity becomes an LLC, the entity must notify the Wisconsin Department of Revenue of the change. Notification may be made by filing an Application for Business Tax Registration, Form BTR-101, for the new entity or by enclosing a letter of explanation with the sales and use tax return, Form ST-12, filed. This is the case whether or not the Internal Revenue Service requires the LLC to obtain a new federal employer identification number.

Generally, an existing partnership or corporation that becomes an LLC will not be subject to sales or use tax on the transfer of its assets to the LLC, provided there is no change in the ownership interests of its members. A business entity that converts to another business entity is subject to the sales and use tax provisions applicable to liquidations, reorganizations, and business entity formations. [§77.61(15), Wis. Stats.]

A member, employee, or other “responsible person” who is under a duty to collect and remit sales and use taxes for an LLC may be held personally liable

for the LLC’s Wisconsin sales and use taxes. [§77.60(9), Wis. Stats.]

Example: An LLC has five members. Member A has the authority and responsibility to make the Wisconsin sales and use tax payments to the Department of Revenue. The other four members are not responsible for paying the sales and use taxes. Member A is a “responsible person” and may be held personally liable for the LLC’s Wisconsin sales and use taxes. The other members are not “responsible persons” and, therefore, are not personally liable for the LLC’s taxes.

If an LLC is disregarded as a separate entity for Wisconsin franchise or income tax purposes, its owner must include the LLC’s information on the owner’s Wisconsin sales and use tax returns. If the Internal Revenue Service does not require the LLC to obtain a separate federal employer identification number, the LLC is not required to obtain a separate Wisconsin seller’s permit, use tax, or consumer’s use tax number. [§§77.51(10) and 77.58(3)(a), Wis. Stats.] However, the LLC and its owner are still considered to be two separate entities for purposes of determining the taxability of transactions between them. In addition, the LLC and its owner are considered separate entities for purposes of sales tax nexus.

E. Excise Taxes (Beverage, Fuel, Cigarette, and Tobacco)

For excise tax purposes, LLCs are treated in the same manner as other business entities. The LLC is required to register, pay, and furnish reports of Wisconsin excise taxes as are others. [Ch. 78, 125, and 139, Wis. Stats.]

A member, employee, or other “responsible person” who is under a duty to pay motor vehicle fuel, alternate fuel, or aviation fuel taxes for the LLC may be held personally liable for the LLC’s Wisconsin excise taxes required to be paid. [§78.70(6), Wis. Stats.]

If an LLC is disregarded as a separate entity for Wisconsin franchise or income tax purposes, its owner is subject to any excise taxes based on the LLC’s activities. [§125.02(14), Wis. Stats.]

F. Withholding Requirement for LLCs Having Nonresident Members

In general, an LLC that has one or more nonresident members is required to withhold income or franchise tax on the income allocable to the nonresident members.

A nonresident member includes an individual who is not domiciled in Wisconsin, an estate or a trust that is a nonresident under sec. 71.14(1) to (3m), Wis. Stats., and a partnership, LLC, or corporation whose commercial domicile is outside Wisconsin. The withholding rate for members who are individuals, estates, and trusts is the highest rate for a single individual under sec. 71.06, Wis. Stats. The withholding rate for members that are partnerships, LLCs, or corporations is 7.9%.

Exceptions: Withholding is not required on behalf of the following nonresident members:

- A member that is exempt from Wisconsin income or franchise taxation. The LLC may rely on a written statement from a member explaining why the member is exempt from Wisconsin tax.
- A member with no Wisconsin income other than his, her, or its share of income attributable to Wisconsin, and his, her, or its share of that income is less than \$1,000.

The LLC uses Form PW-1 to pay the withholding. Form PW-1 is due with payment by the 15th day of the 4th month following the close of the LLC's taxable year. It must be filed, and payment must be made, by electronic means unless electronic filing and payment presents an undue hardship. See the Form PW-1 instructions for details of the filing procedures.

Nonresident members having a Wisconsin filing requirement must file the appropriate Wisconsin income or franchise tax return.

VIII. TAX TREATMENT OF MEMBERS OF LLCS CLASSIFIED AS PARTNERSHIPS

LLC members are treated as follows for Wisconsin franchise and income tax purposes.

A. LLC Members Who Are Full-Year Wisconsin Resident Individuals, Estates, and Trusts

All LLC income or loss of full-year Wisconsin residents is includable in the computation of Wisconsin taxable income, regardless of the situs of the LLC or the nature of the income from the LLC, such as business income, service income, or professional income, unless otherwise exempt (such as U.S. government interest). [§§71.02(1) and 71.04(1)(a), Wis. Stats.]

Example: An LLC is engaged in business in and outside Wisconsin. Member A, a full-year Wisconsin resident, has a 10% interest in the LLC. The LLC has ordinary income of \$100,000, of which \$60,000 is attributable to business conducted in Wisconsin. Member A is subject to Wisconsin income tax on \$10,000 of LLC income [10% x \$100,000].

The gain or loss from the disposition of an LLC interest is also includable in Wisconsin net income for a full-year Wisconsin resident. [§71.04(1)(a), Wis. Stats.]

B. LLC Members Who Are Nonresident Individuals, Estates, and Trusts

A nonresident member's portion of the LLC income or loss which is attributable to a business located in Wisconsin, services performed in Wisconsin, or real or tangible personal property located in Wisconsin is includable in the computation of Wisconsin taxable income. Business income is taxable whether or not the individual member conducts business in Wisconsin. However, LLC income derived from personal services, including professional services, is taxable to a nonresident member only if that nonresident member personally performs services in Wisconsin. The amount of personal service income attributable to the nonresident member's services performed in Wisconsin is taxable. [§§71.02(1) and 71.04(1)(a), Wis. Stats.]

Example 1: A nonresident of Wisconsin has a 30% interest in an LLC that is engaged in business in and outside Wisconsin. The LLC has ordinary income of \$150,000, of which \$60,000 is attributable to its business activities in Wisconsin. The nonresident member is subject to Wisconsin income tax on \$18,000 of LLC income [30% x \$60,000].

Example 2: A nonresident of Wisconsin has a 5% interest in an engineering firm that is organized as an LLC and operates in and outside Wisconsin. The LLC receives income solely from the performance of engineering services. The nonresident member does not personally perform any engineering services in Wisconsin. The nonresident member's share of LLC income is not taxable by Wisconsin.

Since an LLC interest is intangible personal property, any gain or loss realized on the disposition of an LLC interest is not includable in Wisconsin taxable income. Gain or loss from the sale of intangible personal property follows the residence of nonresidents. [§71.04(1)(a), Wis. Stats.]

An LLC that has two or more nonresident members whose only Wisconsin taxable income is their shares of LLC income or loss may file a composite Wisconsin individual and fiduciary return on behalf of those qualifying members. The LLC files this return on Form 1CNP.

C. LLC Members Who Are Part-Year Wisconsin Resident Individuals

An individual who is a part-year resident of Wisconsin must report to Wisconsin:

- **While a resident:** All LLC income or loss, regardless of where it is earned or incurred, while a resident of Wisconsin. The gain or loss from the disposition of an LLC interest while a Wisconsin resident is includable in Wisconsin net income. [§71.04(1)(a), Wis. Stats.]
- **While a nonresident:** All LLC income or loss that is attributable to a business located in Wisconsin, services the individual personally performed in Wisconsin, or real or tangible personal property located in Wisconsin, while a nonresident of Wisconsin. The disposition of an

LLC interest while a nonresident of Wisconsin is treated in the same manner as for nonresidents. Since a member's interest in an LLC is considered intangible personal property, any gain or loss realized on the disposition of an LLC interest while a nonresident is not includable in Wisconsin taxable income. Gain or loss from the sale of intangible personal property follows the residence of nonresidents. [§§71.02(1) and 71.04(2) and (3), Wis. Stats.]

Example: Member A has a 25% interest in an LLC that is engaged in business in and outside Wisconsin. For its taxable year beginning January 1, 2005, the LLC has ordinary income of \$50,000, of which \$40,000 is attributable to business activities in Wisconsin. Member A was a Wisconsin resident for 90 days during the LLC's taxable year. Member A is subject to Wisconsin income tax on \$10,616 of LLC income, which is calculated as follows:

For the period of residence:		
25% x 90/365 x \$50,000	=	\$ 3,082
For the period of nonresidence:		
25% x 275/365 x \$40,000	=	<u>7,534</u>
Total		<u>\$ 10,616</u>

D. LLC Members That Are Corporations

Corporations doing business in Wisconsin are subject to Wisconsin franchise or income tax. In this publication, the terms "doing business," "engaged in business," and "nexus," refer to the degree of activity necessary before a state or foreign country has jurisdiction to impose an income tax or franchise tax measured by net income on the corporation.

The Wisconsin tax treatment of a corporation that is a member of an LLC depends on where the corporation and the LLC are doing business.

"Doing business" in Wisconsin includes owning, directly or indirectly, a general or limited partnership interest in a partnership or an interest in a limited liability company treated as a partnership that does business in Wisconsin.

A multistate corporation that is a member of an LLC treated as a partnership for federal tax purposes includes its share of the numerator and

denominator of the LLC's apportionment factors in the numerator and denominator of its apportionment factors.

Note: Income from an LLC may be nontaxable under the principles of the U.S. Supreme Court decision in *Allied-Signal v. Director, Div. of Taxation*, 504 U.S. 768 (1992), if the investment is passive and does not serve an operational function. In this case, the corporation would not include its share of the LLC's apportionment factors in the numerator and denominator of its apportionment factors.

1. Corporate Member Engaged in Business Wholly Within Wisconsin

If a corporation that is engaged in business only in Wisconsin is a member of an LLC, the corporation's share of the LLC's net income or loss is included in its Wisconsin net income or loss. For a corporation engaged in business wholly within Wisconsin, all income is subject to Wisconsin franchise or income tax. [§71.25(4), Wis. Stats.]

Example 1: A corporation that is engaged in business only in Wisconsin acquires a 40% interest in an LLC that is engaged in business only in Wisconsin. The LLC has \$250,000 of net income. The corporation must include its \$100,000 share of the LLC's net income in its Wisconsin net income.

2. Corporate Member Engaged in Business in and Outside Wisconsin

If a corporation that is engaged in business in and outside Wisconsin is a member of an LLC, the corporation's share of the LLC's net income or loss generally is included in its apportionable income or loss. [§71.25(5)(a)14, Wis. Stats.]

In computing the corporation's apportionment factors, the corporation combines its share of the LLC's apportionment data with its own apportionment data to determine the income allocable to Wisconsin. [§§71.25(9)(e)8, 71.25(15), and 71.45(6), Wis. Stats.]

Example 1: A corporation that is engaged in business in and outside Wisconsin acquires a 60% interest in an LLC that is engaged in business in Wisconsin. The corporation must determine its Wisconsin net income under the apportionment method. The LLC has \$300,000 of business income. Sixty percent, or \$180,000, of the LLC's business income is included in the corporation's apportionable income or loss. Sixty percent of the LLC's Wisconsin property, payroll, and sales is included in the numerator of the corporation's property, payroll, and sales factors, respectively, and 60% of the LLC's total property, payroll, and sales is included in the denominator of the corporation's property, payroll, and sales factors, respectively.

Example 2: A corporation that has been engaged in business only in Wisconsin acquires a 55% interest in an LLC that is engaged in business in and outside Wisconsin. Therefore, the corporation is engaged in business in the states where the LLC is engaged in business. The corporation must determine its Wisconsin net income under the apportionment method. Fifty-five percent of the LLC's business income or loss is included in the corporation's apportionable income or loss. Fifty-five percent of the LLC's Wisconsin property, payroll, and sales is included in the numerator of the corporation's property, payroll, and sales factors, respectively, and 55% of the LLC's total property, payroll, and sales is included in the denominator of the corporation's property, payroll, and sales factors, respectively.

3. Corporate Member Not Engaged in Business in Wisconsin

If a corporation that has not been engaged in business in Wisconsin acquires an interest in an LLC that is engaged in business in Wisconsin, the corporation is subject to Wisconsin franchise or income taxation. The corporate member is engaged in business in Wisconsin as a result of holding an interest in the LLC.

The corporation's share of the LLC's net income or loss is includable in its apportionable income. [§§71.22(1r) and 71.25(5)(a)14, Wis. Stats.] The corporation combines its share of the LLC's apportionment data with its own apportionment data to determine the income allocable to Wisconsin. [§§71.25(9)(e)8, 71.25(15), and 71.45(6), Wis. Stats.]

Example: A corporation that has not been engaged in business in Wisconsin acquires a 50% interest in an LLC that is engaged in business in Wisconsin. Therefore, the corporation is engaged in business in Wisconsin and is subject to Wisconsin franchise or income tax. The corporation must determine its Wisconsin net income under the apportionment method. Fifty percent of the LLC's business income or loss is included in the corporation's apportionable income or loss. Fifty percent of the LLC's Wisconsin property, payroll, and sales is included in the numerator of the corporation's property, payroll, and sales factors, respectively, and 50% of the LLC's total property, payroll, and sales is included in the denominator of the corporation's property, payroll, and sales factors, respectively. In addition, since the corporation has nexus with Wisconsin, any Wisconsin destination sales made by the corporation are included in the numerator of its sales factor.

E. LLC Members That Are Partnerships (Including LLCs Classified as Partnerships)

A partnership, including an LLC classified as a partnership, that is a member of an LLC doing business in Wisconsin is required to file a Wisconsin partnership return. The LLC member is considered to have income from business transacted in Wisconsin.

Partners of a partnership that is a member of an LLC are treated in the same manner as partners in other partnerships that are doing business in Wisconsin. For example, full-year Wisconsin resident individual partners are subject to Wisconsin income tax on their distributive shares of the partnership's entire income, including its share of LLC income. Nonresident individual partners are subject to Wis-

consin income tax on their distributive shares of the partnership's income, including its share of LLC income, derived from business transacted in Wisconsin.

Example: Partnership A, which has not been engaged in business in Wisconsin, acquires a 40% interest in an LLC that is engaged in business in Wisconsin. Individuals throughout the United States are limited partners in Partnership A. Partnership A must file a Wisconsin partnership return because its 40% share of the LLC's income is income from Wisconsin sources. The nonresident partners must file Wisconsin income tax returns. They are subject to Wisconsin income tax on their distributive shares of Partnership A's share of the LLC income.

IX. TAX TREATMENT OF MEMBERS OF LLCs CLASSIFIED AS CORPORATIONS

If an LLC is classified as a corporation, an LLC interest is treated in the same manner as stock. The LLC's members are taxed as explained below. If an LLC meets the requirements and elects to be treated as a tax-option (S) corporation, its members report their pro rata shares of the entity's items of income, loss, and deduction as explained in the Wisconsin Form 5S instructions.

A. LLC Members Who Are Full-Year Wisconsin Resident Individuals, Estates, and Trusts

Full-year residents are subject to Wisconsin income tax on distributions of income received from an LLC, regardless of where it is located. If a Wisconsin resident disposes of an LLC interest, any gain or loss is includable in Wisconsin taxable income. [§§71.02(1) and 71.04(1)(a), Wis. Stats.]

B. LLC Members Who Are Nonresident Individuals, Estates, and Trusts

Nonresidents are not subject to Wisconsin income tax on distributions of LLC income. Gain or loss realized on the disposition of an LLC interest is not includable in Wisconsin taxable income. [§§71.02(1) and 71.04(1)(a), Wis. Stats.]

C. LLC Members Who Are Part-Year Wisconsin Resident Individuals

Part-year residents are taxed on distributions of LLC income received while a resident of Wisconsin. Gain or loss realized on the disposition of an LLC interest while a Wisconsin resident is includable in Wisconsin taxable income. [§§71.02 and 71.04(2) and (3), Wis. Stats.]

Distributions of LLC income received while a nonresident of Wisconsin are not taxable by Wisconsin. Any gain or loss realized on the disposition of an LLC interest while a nonresident is not includable in Wisconsin taxable income.

D. LLC Members That Are Corporations

A corporation whose entire business income is attributable to Wisconsin is subject to Wisconsin franchise or income tax on income distributions received from an LLC, regardless of where the LLC is located. Gain or loss on the disposition of an LLC interest is includable in Wisconsin net income. [§§71.25(4) and 71.26(2), Wis. Stats.]

A multistate corporation includes income distributions and gain or loss on dispositions of an LLC interest in apportionable income if there is a unitary relationship between the corporation and the LLC, or if the LLC is not an affiliate or subsidiary and the LLC interest is part of the corporation's unitary investment activity and serves an operational function. [§§71.25(5)(a) and 71.26(2), Wis. Stats.]

E. LLC Members That Are Partnerships (Including LLCs Classified as Partnerships)

Distributions from an LLC are treated in the same manner as dividend income. Gain or loss on the disposition of an LLC interest is treated as income or loss from intangibles.

X. TAX TREATMENT OF MEMBERS OF LLCs DISREGARDED AS SEPARATE ENTITIES

If an LLC is disregarded as a separate entity, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner. The

owner is subject to the Wisconsin tax on or measured by the LLC's income.

A. LLC Members Who Are Full-Year Wisconsin Resident Individuals, Estates, and Trusts

Full-year residents treat the LLC income or loss as if it were from a sole proprietorship. They report the income or loss on federal Schedule C and include it in their Wisconsin adjusted gross income, regardless of where the LLC is located or the nature of its income. [§71.02(1), Wis. Stats.]

B. LLC Members Who Are Nonresident Individuals, Estates, and Trusts

Nonresidents treat the LLC income or loss as if it were from a sole proprietorship. They report the income or loss on federal Schedule C and include it in their Wisconsin taxable income to the extent that it is attributable to a business located in Wisconsin, services performed in Wisconsin, or real or tangible personal property located in Wisconsin. [§§71.02(1) and 71.04(1)(a), Wis. Stats.]

C. LLC Members Who Are Part-Year Wisconsin Resident Individuals

Part-year residents treat the LLC income or loss as if it were from a sole proprietorship. They report the income or loss on federal Schedule C and include in their Wisconsin taxable income the following amounts:

- **While a resident:** All LLC income or loss, regardless of where it is earned or incurred, while a resident of Wisconsin. [§§71.02(1) and 71.04(1) and (2), Wis. Stats.]
- **While a nonresident:** All LLC income or loss that is attributable to a business located in Wisconsin, services performed in Wisconsin, or real or tangible personal property located in Wisconsin. [§§71.02(1) and 71.04(1) and (2), Wis. Stats.]

D. LLC Members That Are Corporations

A corporation treats the LLC income or loss as if it were from a division of the corporation. If either the corporation or the LLC is engaged in business in Wisconsin, the corporation has nexus with Wisconsin.

sin and must file Wisconsin corporation franchise or income tax returns.

If the corporation and the LLC are engaged in business only in Wisconsin, the corporation is subject to Wisconsin franchise or income tax on its entire net income, including the income from the LLC. [§§71.22(1), 71.25(4), and 71.26(2), Wis. Stats.]

If either the corporation or the LLC is engaged in business in and outside Wisconsin, the corporation includes the LLC's income or loss in its apportionable income or loss. The corporation computes its apportionment factors by combining the LLC's apportionment data with its apportionment data. [§§71.22(1) and (1r), 71.25(5)(a) and (15), 71.26(2), and 71.45(6), Wis. Stats.]

If a corporation that has not been engaged in business in Wisconsin organizes a solely owned LLC that does business in Wisconsin, the corporation must file Wisconsin franchise or income tax returns. The corporation includes the LLC's income or loss in its apportionable income or loss. The corporation computes its apportionment factors by combining the LLC's apportionment data with its apportionment data. [§§71.22(1) and (1r), 71.25(5)(a) and (15), 71.26(2), and 71.45(6), Wis. Stats.]

E. LLC Members That Are Partnerships (Including LLCs Classified as Partnerships)

A partnership treats the LLC income or loss as if it were from a branch of the partnership. If either the partnership or the LLC has income from Wisconsin sources, the partnership must file a Wisconsin partnership return.

The partnership combines the LLC's items of income, loss, and deduction with its items of income, loss, and deduction. If either the partnership or the

LLC is engaged in business in and outside Wisconsin, the partnership combines the LLC's apportionment data with its apportionment data. [§71.20(1), Wis. Stats.]

XI. ADDITIONAL INFORMATION OR FORMS

If, after reading this publication, you have any questions about Wisconsin's treatment of LLCs, you may:

- E-mail your question to corp@dor.state.wi.us
- Send a FAX to (608) 267-0834
- Call (608) 266-2772 [TTY (608) 267-1049]
- Write to the Audit Bureau, Wisconsin Department of Revenue, Mail Stop 5-144, P.O. Box 8906, Madison, WI 53708-8906
- Call or visit any Wisconsin Department of Revenue office

If you need forms, you may:

- Download forms from the Department's Internet web site at www.dor.state.wi.us
- Use your fax telephone to call the Department's Fax-A-Form Retrieval System at (608) 261-6229
- Request them on line at www.dor.state.wi.us/html/formsreq.html
- Call (608) 266-1961
- Write to the Forms Request Office, Wisconsin Department of Revenue, Mail Stop 1-151, P.O. Box 8949, Madison, WI 53708-8949
- Call or visit any Wisconsin Department of Revenue office